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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13
14 State of Arizona, *ex rel.* Kristin K. Mayes,
15 Attorney General; et al.,

16 Plaintiffs,

17 v.

18 Michael D. Lansky, L.L.C., dba Avid Telecom;
19 et al.,

20 Defendants.
21
22

NO. 4:23-cv-00233-TUC-CKJ

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO
DEFENDANTS' MOTION FOR
LEAVE TO FILE FURTHER
SUPPLEMENTAL MOTION
TO DISMISS (DOC. 150)**

23
24 Plaintiffs respectfully file this Response in Opposition to Defendants' Motion for
25 Leave to File Further Supplemental Motion to Dismiss. (Doc. 150). For the reasons set
26 forth below, the Court should deny Defendants' motion and strike the contemporaneously
27 filed Supplement to Defendants' Motion to Dismiss. (Doc. 151).
28

1 **I. Defendants cannot supplement a motion that has already been adjudicated;**
 2 **accordingly, Defendants’ Motion for Leave to Supplement should be**
 3 **denied.**

4 Before filing an answer in this case, Defendants filed a Motion to Dismiss pursuant
 5 to Rule 12(b) of the Federal Rules of Civil Procedure. (Doc. 39). After briefing, this Court
 6 issued an Order denying Defendants’ Motion to Dismiss. (Doc. 64). Now, Defendants ask
 7 this Court for leave to supplement their denied Motion. (Doc. 150).

8 Defendants seek to further brief this Court on an issue this Court has already
 9 decided, with the aim of convincing this Court to withdraw its previous decision and issue
 10 a contrary one. Defendants argue that such relief is justified because of an intervening
 11 change in the controlling law. The proper vehicle for such a request is a motion for
 12 reconsideration. *See* LRCiv. 7.2(g); *see also Kona Enters. v. Estate of Bishop*, 229 F.3d
 13 877, 890 (9th Cir. 2000) (“[A] motion for reconsideration should not be granted, absent
 14 highly unusual circumstances, unless the district court is presented with newly discovered
 15 evidence, committed clear error, or if there is an intervening change in the controlling law.”
 16 (quotations and citation omitted)).

17 Because Defendants impermissibly attempt to supplement the briefing on an issue
 18 that has been conclusively decided, this Court should deny the Motion for Leave to
 19 Supplement (Doc. 150) and strike the contemporaneously filed Supplement (Doc. 151).

20 **II. If this Court considers Defendants’ Motion for Leave and corresponding**
 21 **Supplement to be a motion for reconsideration, this Court should deny the**
 22 **same as procedurally and substantively deficient.**

23 Even if the Court construes Defendants’ Motion for Leave and corresponding
 24 Supplement as a motion for reconsideration of this Court’s May 8, 2024 Order (Doc. 64),
 25 the Court should still deny it.

26 Motions for reconsideration may not be used to raise arguments for the first time.
 27 *See Kona Enters.*, 229 F.3d at 890 (A motion for reconsideration “may *not* be used to raise
 28 arguments...for the first time when they could reasonably have been raised earlier in the
 litigation.” (emphasis original)). In their Motion for Leave and corresponding Supplement,

1 Defendants argue that, as a general rule, corporate officers cannot be held personally liable
2 under the Telephone Consumer Protection Act (“TCPA”); Defendants did not include this
3 argument in their original Motion to Dismiss (Doc. 39). Defendants’ Motion to Dismiss
4 argued only that these specific Defendants could not be held personally liable, as Defendant
5 Reeves was purportedly an independent contractor and the Complaint did not plead
6 sufficient facts to pierce the corporate veil as to Defendant Lansky. (Doc. 39 at 11-12, 14-
7 15). Defendants raised the general argument—that no corporate officer could be personally
8 liable under the TCPA—for the first time in their “Supplement to Defendants’ Motion to
9 Dismiss” (Doc. 62), which was submitted after the close of briefing on the Motion to
10 Dismiss. Finding that it contained inappropriate additional argument, this Court struck
11 Defendants’ Supplement. (Doc. 64, at 21).

12 With this incorrectly-styled motion for reconsideration, Defendants are again
13 attempting to “supplement” their Motion to Dismiss with the argument that the TCPA does
14 not provide for personal liability against corporate officers. But a motion for
15 reconsideration is not the place for Defendants to raise an argument not included in their
16 Motion to Dismiss. Should the Court consider the Motion for Leave to Supplement as a
17 motion for reconsideration, this Court should deny Defendants’ Motion as it contains
18 inappropriate legal argument not included in its original Motion to Dismiss.

19 Additionally, Defendants’ Motion is untimely. Absent good cause, this District’s
20 Local Rules require that motions for reconsideration be filed no later than 14 days after the
21 filing of the challenged Order. LRCiv. 7.2(g)(2). Defendants’ Motion was filed 492 days
22 after the Court’s Order. Defendants attempt to justify the delay by arguing that the Motion
23 is supported by two recent U.S. Supreme Court cases, concerning judicial treatment of
24 agency interpretation of ambiguous statutes. But Defendants’ cited cases would not alter
25 the outcome of the motion to dismiss that they are, in the most generous possible reading,
26 asking this Court to reconsider. Defendants’ Motion fails to identify any instance in this
27 Court’s Order where the Court references an obligation to defer to a federal agency’s
28 interpretation of the TCPA regarding the liability of corporate officers. In fact, the Court

1 found that it was precluded from granting the Motion to Dismiss by questions of fact
2 relevant to determining vicarious liability and individual liability. (*Id.* at 16 and 20-21.).

3 Plaintiffs are prepared to file a response expanding on these and other reasons for
4 denial. However, Plaintiffs recognize that LRCiv. 7.2(g)(2) limits responses to motions for
5 reconsideration to those ordered by the Court. Accordingly, Plaintiffs will provide further
6 argument only at this Court's request.

7 **III. Conclusion**

8 As additional briefing on a previously decided motion is improper, this Court should
9 deny Defendants' Motion for Leave for file Further Supplemental Motion to Dismiss (Doc.
10 150) and strike the contemporaneously filed Supplement (Doc. 151).

11 If, in the alternative, this Court considers Defendants' Motion for Leave and
12 corresponding Supplement as a motion for reconsideration, this Court should deny it as
13 procedurally and substantively deficient.

RESPECTFULLY SUBMITTED this 26th day of September, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2025, I caused the foregoing Plaintiffs' Response in Opposition to Defendants' Motion for Leave to File Further Supplemental Motion to Dismiss to be filed and served electronically via the Court's CM/ECF system upon counsel of record.

/s/ Emily G. Dietz

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